IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MELISSA GUARDIOLA,	:	
Plaintiff(s)	:	
	:	Civil Action No: 1:16-cv-05262-JSR
v.	:	
	:	**Jury Trial Demanded**
KIA MOTORS AMERICA, INC., GGL, LLC d/b/a KIA OF STAMFORD and KIA OF STAMFORD	:	**ANSWER**
Defendant	:	

Defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford (hereinafter collectively referred to as Kia Stamford), by its attorneys, Lavin, O'Neil, Cedrone & DiSipio, hereby answers plaintiff's complaint as follows:

1. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

2. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

3. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

4. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

5. Denied.

6. Denied as stated.

7. Denied.

8. Denied as stated.

9. Admitted.

10. Denied.

11. Denied as stated.

12. Denied.

13. Denied as stated.

14. Denied as stated. It is admitted only that on 5/10/2015, GGL, LLC was doing business as Kia of Stamford.

15. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

16. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

17. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

18. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

19. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

20. Denied as stated.

21. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

22. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

23. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

24. Denied as stated. It is admitted only that Kia Stamford is engaged in the business of selling certain Kia brand vehicles.

25. Denied as stated.

26. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

27. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

28. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

29. Denied as stated. It is admitted only that Kia Stamford is engaged in the business of selling certain Kia brand vehicles.

30. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

31. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

32. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

33. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

34. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

35. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

36. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

37. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

38. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

39. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

40. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

41. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

42. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied as stated. It is admitted only that Kia Stamford sold the vehicle that is the subject to this suit.

48. Denied as stated. It is admitted only that Kia Stamford is engaged in the business of selling certain Kia brand vehicles.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied as stated. It is admitted only that Kia Stamford sold the vehicle that is the subject to this suit.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied as stated. It is admitted only that Kia Stamford sold the vehicle that is the subject to this suit.

60. Denied as stated. It is admitted only that Kia Stamford is engaged in the business of selling certain Kia brand vehicles.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied as stated. It is admitted only that Kia Stamford sold the vehicle that is the subject to this suit.

66. Denied.

67. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

68. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

69. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

70. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

71. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

72. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

73. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

74. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

75. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

76. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

77. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

78. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

79. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "78" with the same force and effect as though fully set forth herein stated in paragraph "79."

80. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

81. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

82. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

83. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

84. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

85. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

86. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

87. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

88. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "87" with the same force and effect as though fully set forth herein stated in paragraph "88."

89. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

90. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

91. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

92. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "91" with the same force and effect as though fully set forth herein stated in paragraph "92."

93. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

94. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

95. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

96. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "95" with the same force and effect as though fully set forth herein stated in paragraph "96."

97. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

98. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

99. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

100. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

SIXTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

101. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "100" with the same force and effect as though fully set forth herein stated in paragraph "101."

102. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

103. Denied. To the extent the allegations in this paragraph are directed at entities or individuals other than Kia Stamford, no response is required.

104. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

105. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

106. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

SEVENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

107. Kia Stamford repeats, reiterates and realleges each and every response to paragraphs "1" through "106" with the same force and effect as though fully set forth herein stated in paragraph "107."

108. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

109. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

110. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

111. Denied. To the extent the allegations in this paragraph represent conclusions of law, no response is required.

112. Denied. After reasonable investigation, Kia Stamford is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied and proof thereof is demanded.

WHEREFORE, defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford, demands judgment in its favor and against plaintiff on all claims asserted in plaintiff's Complaint, together with costs of suit and attorney's fees.

FIRST AFFIRMATIVE DEFENSE

Upon information and belief plaintiff's Complaint, fails to properly state, specify or allege a cause of action upon which relief can be granted as a matter of law.

SECOND AFFIRMATIVE DEFENSE

Upon information and belief, culpable conduct on the part of the plaintiff caused or contributed to the occurrence of the accident and, accordingly plaintiff should be barred from recovery by reason of the fact that the subject accident was entirely the result of culpable conduct on the part of plaintiff or, in the event that plaintiff is entitled to recover, the amount of damages otherwise recoverable should be diminished in the proportion to which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred in whole or in part by the applicable statute(s) of limitations.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, any damages sustained by the plaintiff, as alleged in the Complaint, were caused by persons, entities, or parties other than the answering defendant.

FIFTH AFFIRMATIVE DEFENSE

Any conduct allegedly causing liability on the part of Kia Stamford, was not a substantial cause of the subject incident or plaintiff's alleged injuries, damages, and/or losses.

SIXTH AFFIRMATIVE DEFENSE

The injuries, damages and/or losses allegedly sustained by plaintiff may have been caused entirely by, or contributed to by, the negligent acts or omissions of individuals and/or entities other than Kia Stamford.

SEVENTH AFFIRMATIVE DEFENSE

Negligent acts or omissions of individuals and/or entities other than Kia Stamford constitute intervening, superseding acts of negligence.

EIGHTH AFFIRMATIVE DEFENSE

In the event that any person or entity liable or claimed to be liable for the injury alleged in this action has been given or may hereafter be given a release or covenant not to sue, defendant will be entitled to protection under New York General Obligations Law § 15-108 and the corresponding reduction of any damages which may be determined to be due against defendant.

NINTH AFFIRMATIVE DEFENSE

In the event plaintiff recovers a verdict or judgment against this answering defendant, then said verdict or judgment must be reduced pursuant to CPLR § 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, worker's compensation, or employee benefit programs.

TENTH AFFIRMATIVE DEFENSE

That the equitable share of this answering defendant's joint liability, if any, is limited by the statutory operation of CPLR § 1601.

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff, if she may have sustained any injuries at the time and place, and upon the occasion mentioned in the Complaint, assumed the risk of sustaining same under the conditions and circumstances then existing.

TWELFTH AFFIRMATIVE DEFENSE

The product referred to in plaintiff's Complaint may have been misused or abnormally used at or before the time of the occurrence of the subject incident.

THIRTEENTH AFFIRMATIVE DEFENSE

The injuries and/or losses allegedly sustained by plaintiff were not proximately caused by Kia Stamford.

FOURTEENTH AFFIRMATIVE DEFENSE

The product referred to in plaintiff's Complaint may have been substantially altered and/or changed after it left the possession and control of the manufacturer and/or distributor.

FIFTEENTH AFFIRMATIVE DEFENSE

The product referred to in plaintiff's Complaint complied with any and all applicable federal, state, and local laws, standards, and regulations.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff may have failed to mitigate her alleged damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Any damages and/or injuries which plaintiff may have sustained were caused by the improper, abnormal, unforeseeable, and unintended use of the product referred to in plaintiff's Complaint by plaintiff and/or other persons for whom Kia Stamford is not responsible.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff and/or entities and/or other persons not in the control of Kia Stamford may be responsible for the destruction and/or spoliation of evidence resulting in prejudice to Kia Stamford in its ability to prepare a defense to plaintiff's claims.

NINETEENTH AFFIRMATIVE DEFENSE

Kia Stamford pleads the release, if any, that may have been executed by plaintiff and states that such release eliminates and/or diminishes the alleged liability of Kia Stamford and/or damages in this action and/or may bar plaintiff's recovery.

TWENTIETH AFFIRMATIVE DEFENSE

Abnormal use, misuse, abuse, neglect, or unauthorized alteration of the product referred to in plaintiff's Complaint may constitute the sole and exclusive cause of the accident and/or injuries alleged in plaintiff's Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Kia Stamford generally denies each and every allegation contained in plaintiff's Complaint as it relates to the alleged liability of KIA STAMFORD.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Venue may be improper and/or inconvenient.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Kia Stamford hereby reserves the right, upon completion of its investigation and discovery, to file such additional defenses, separate defenses, counterclaims, and/or third-party Complaints as may be appropriate.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Kia Stamford hereby reserves the right to file a Motion to Dismiss plaintiff's claims on the ground that plaintiff has no legal cause of action against KIA STAMFORD.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Kia Stamford did not violate any legal duty owed to the plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Liability against Kia Stamford is precluded as a matter of law based upon the balanced consideration of risk utility factors.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Kia Stamford denies there existed any warranties either express or implied between it and the plaintiff or any other party in this action other than certain limited warranties extended to the original retail purchaser of the subject vehicle; any and all warranties are limited to those set forth therein.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Kia Stamford breached no warranties either express or implied.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff may have failed to properly effect service of process on Kia Stamford under the requirements of the New York Court Rules.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff failed to establish personal jurisdiction over Kia Stamford as pertaining to this matter.

JURY DEMAND

Defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford, hereby demands pursuant to Fed.R.Civ. 38(b) a trial by jury of twelve (12) as to all issues.

Respectfully submitted,

LAVIN, O'NEIL, CEDRONE & DISIPIO

By: /s/ Leland I. Kellner

Gerard Cedrone, Esquire (2996627)
Leland I. Kellner, Esquire (4086625)
420 Lexington Avenue, Ste. 335
Graybar Building
New York, NY 10170
Tel No.: (212) 319-6898
Fax No.: (212) 319-6932
Attorneys for Defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford

DATED: August 8, 2016

ATTORNEY VERIFICATION

I, Leland Kellner, Esquire, verify that I am counsel for defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford, and that the facts set forth in the foregoing Answer to plaintiff's Complaint with Affirmative Defenses are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties.

LAVIN, O'NEIL, CEDRONE & DISIPIO

By: /s/ Leland I. Kellner
Leland I. Kellner, Esquire (4086625)
420 Lexington Avenue, Ste. 335
Graybar Building
New York, NY 10170
Tel No.: (212) 319-6898
Fax No.: (212) 319-6932
Attorneys for Defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford

DATED: August 8, 2016

CERTIFICATE OF SERVICE

I, Leland I. Kellner, Esquire, hereby certify that I caused to be served, this 8th day of August 2016 a true and correct copy of defendant's, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford, Answer with Affirmative Defenses, upon the following counsel of record:

Allen Goldberg
Bergman, Bergman, Goldberg
801 South Broadway
Hicksville, New York 11801

LAVIN, O'NEIL, CEDRONE & DISIPIO

By: _/s/ Leland I. Kellner___________________________

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Attorneys for Defendant, GGL, LLC d/b/a Kia of Stamford and Kia of Stamford

DATED: August 8, 2016